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November 22, 2010

Via Hand Delivery

The Honorable Robert E. Payne, Judge
United States District Court
for the Eastern District of Virginia, Richmond Division
Spottswood W. Robinson III and
Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Re: *ePlus, Inc. v. Lawson Software, Inc.*
Civil Action No. 3:09cv620 (REP)

Dear Judge Payne:

Plaintiff ePlus, Inc. (“ePlus”) has reflected on Defendant’s motion with respect to ePlus’s right to a jury trial for the willfulness of the Defendant’s infringement. While ePlus believes it is clear under the case law that it has such a Constitutional right, it is now willing to submit the factual issue of willfulness to the Court after a jury finding of infringement and waive a jury trial on this particular issue and this issue alone.

ePlus observes, however, that much of the evidence that would support a finding of willfulness substantially overlaps with other issues that remain in the case for the jury (e.g., Defendant’s state of mind and intent with regard to the induced infringement claims, etc.). Therefore this agreement as to a bench trial for the willfulness issue should in no way be construed as impairing ePlus’s ability to bring forward facts and evidence that would support claims or issues unrelated (albeit also relevant) to Defendant’s willfulness.

In any event, the Court will have heard that evidence during the course of the trial, and it can determine after the jury verdict whether any additional evidence might need to be adduced in a streamlined bench trial on the willfulness of Defendant’s infringement.

Honorable Robert E. Payne
November 22, 2010
Page 2

Accordingly, ePlus believes this action should moot Defendant's motion (Dkt. # 496). ePlus has informed Defendant of its position with respect to this issue prior to providing this notice to the Court.

Respectfully submitted,



Scott L. Robertson

cc: Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of November, 2010, I will electronically file the foregoing letter from Scott L. Robertson with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) via email to the following:

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